

## FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

## Campaign

**Timothy O. Stoen**  
**County of Humboldt**  
**Dated: February 11, 2004**  
**File Number A-03-185**

A district attorney may solicit individuals and organizations to make payments directly to a private law firm for costs of a lawsuit the district attorney's office is authorized to litigate. Such payments which are made at the behest of the district attorney by third persons directly to the law firm are not contributions provided they are made principally for legislative, governmental or charitable purposes. (Supersedes *Totten* Advice Letter No. A-03-130.)

**James Stevens**  
**Franchise Tax Board**  
**Dated: February 9, 2004**  
**File Number A-03-187**

Candidate controlled committees supporting or opposing the recent gubernatorial recall initiative are ballot measure committees subject to mandatory audit under section 90001(g). Candidate controlled committees, and committees formed primarily to support or oppose replacement candidates for Governor, are not subject to mandatory audit under sections 90001(b) and 90001(f), respectively. These mandatory audit provisions apply only in context of direct primary or general elections; the election of a replacement candidate in a recall election is a special election. Finally, the period covered by the mandatory audit of the former Governor's controlled committee opposing the recall initiative begins on January 1, 2003.

**Russell H. Miller**  
**State Assembly**  
**Dated: February 10, 2004**  
**File Number A-04-018**

Transfers of funds from one of a state candidate's campaign committees to another committee controlled by the same candidate are not subject to reporting under sections 84203 or 85309.

**Vigo G. Nielsen**  
**Edvoice**  
**Dated: January 20, 2004**  
**File Number A-03-255**

A major donor need not amend prior campaign reports in the event that a candidate transfers to a different committee contributions made by the major donor.

**The Honorable Bruce McPherson**  
**California Senate**  
**Dated: January 21, 2004**  
**File Number A-04-008**

A candidate is advised on the permissible uses for surplus funds from a pre-Proposition 34 committee and the applicability of the Commission's recently adopted regulation regarding net debt fundraising.

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## Conflict of Interest

**Ronald R. Ball**  
**City of Carlsbad**  
**Dated: February 11, 2004**  
**File Number I-03-240**

Nine projects which are parts of a redevelopment project within a city are separately examined for analysis of a conflict of interest, to determine whether a city council member may vote on any of the governmental decisions.

**Dean Derleth**  
**City of Colton**  
**Dated: February 2, 2004**  
**File Number A-03-247**

A city attorney was provided clarification of prior advice he received in order to correct a listing of public officials having a conflict of interest in his city's redevelopment plan decisions, based on their economic interest in their principal residences. The city attorney was also advised that it is for the public officials, and not the Commission, to determine whether it is reasonably foreseeable that a particular governmental decision will have a material financial effect. The city attorney was provided a list of factors from regulation 18706(b) which a public official may use as a guide to the facts upon which he or she may rely in order to make this determination.

**Kevin G. Ennis**  
**L.A. Care Health Plan**  
**Dated: February 13, 2004**  
**File Number A-03-256**

Reconsideration was sought of prior advice which applied the special form of the "public generally" exception applicable to appointed members of boards or commissions. On reconsideration, the advice provided further analysis of this exception and clarified that under regulation 18707.4(a)(4), the persons a member was appointed to represent are identified by not only the interest which they share with the appointed official, but also by the geographic area which comprises the jurisdiction of the agency, unless the appointive statute or ordinance specifies a different geographic area. In this instance, the official

was appointed to represent all of the free and community clinics located in a county.

**George C. Spanos**  
**Department of Justice**  
**Dated: February 19, 2004**  
**File Number A-04-025**

A member of a state commission who is the owner of a trucking business may participate in a decision to convey excess Caltrans property provided it is not reasonably foreseeable that the decision will materially affect his economic interests.

**Mark Brodsky**  
**City of Monte Sereno**  
**Dated: January 26, 2004**  
**File Number A-03-259**

A council member requested advice on whether he could participate in multiple projects on which he had campaigned. The first proposal would affect his property which is within 500 feet, so he would be required to rebut the presumption of material effect or apply the "public generally" exception. The other two proposals are broad ordinance changes which would not create a conflict of interest for the council member unless the presumption of non-materiality is rebutted.

**Robert E. Davis, CPA**  
**City of Glendora**  
**Dated: January 15, 2004**  
**File Number A-03-260**

It is presumed that a planning commissioner has a conflict of interest in a decision involving his real property interest located within 500 feet of property which is the subject of the decision.

**Elizabeth Wagner Hull**  
**City of Chula Vista**  
**Dated: January 6, 2004**  
**File Number A-03-280**

It is presumed that the real properties of two council members will experience a material financial effect as a result of a governmental decision. Unless this presumption is rebutted, the council members are disqualified from participating in the decision.

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**Michael J. Mais**  
**City of Long Beach**  
**Dated: January 6, 2004**  
**File Number A-03-302**

An airport commissioner, absent specific facts rebutting a presumption that the decision will not have a material financial effect on his economic interests, may vote on an environmental impact report concerning an airport terminal construction project more than ½ mile from his real property, even though the boundaries of the airport property lie within 500 feet of the commissioner's real property.

**John F. Hahn**  
**County of Amador**  
**Dated: January 26, 2004**  
**File Number A-04-005**

A county supervisor who received a notice of lay-off from his state agency employer sought advice as to whether he was prohibited by the conflict-of-interest provisions of the Act from discussing with his fellow supervisors and participating in their vote on whether to oppose the layoffs. The supervisor was advised that he had a conflict of interest prohibiting his participation as a supervisor in the discussion and vote, based on the reasonably foreseeable financial effect upon his personal finances. The supervisor did not qualify for the exception permitting participation as a member of the general public since his interest in his employer did not constitute a "personal interest" within the meaning of regulation 18702.4.

## Conflict of Interest Code

**Mary Tobias Weaver**  
**Quality Education Commission**  
**Dated: January 15, 2004**  
**File Number A-03-225**

A newly created Commission is a state agency and its members are required to disclose their economic interests under the provisions of section 87302.6 of the Act, is the conclusion of this letter.

## Gift Limits

**Victoria LaMar-Haas**  
**Governor's Office of Emergency Services**  
**Dated: February 10, 2004**  
**File Number A-04-003**

A discount given by Disneyland to all firefighters, emergency personnel and rescue personnel in the State of California meets the intent of the *Russel* opinion and is not a gift subject to the Act's disclosure and gift limits.

**Don Schwartz, Director**  
**Great Valley Center**  
**Dated: January 7, 2004**  
**File Number A-03-290**

The director of a 501(c)(3) nonprofit that wishes to pay tuition for elected officials to attend programs designed to enhance their leadership skills is advised that such payments fall into the category of "informational material" and as such, are not considered "gifts" under the Act.

## Mass Mailing

**Stefanie K. Vaudreuil**  
**Chula Vista Elementary School District**  
**Dated: February 25, 2004**  
**File Number I-03-298**

A school district-issued newsletter under the mass mailing regulations is examined and found not to have met the mass mailing definition because less than 200 substantially similar newsletters are sent in any given month.

**Alita Godwin, City Clerk**  
**City of Compton**  
**Dated: January 27, 2004**  
**File Number A-04-004**

The council member was advised that a mass mailing to be sent at city expense will be permitted under regulation 18901(b)(9), the "announcement" exception, if there is only a single mention of the council member's name.

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## Personal Use

**Thomas W. Hiltachk**  
**Office of the Governor**  
**Dated: February 4, 2004**  
**File Number A-04-006**

Campaign funds may be used to pay for hotel accommodations while on official business. Per IRS § 162, these payments may be made for a period not to exceed one year.

**Ken Carpenter**  
**Culver City Fire Fighters**  
**Dated: February 18, 2004**  
**File Number A-04-023**

A local firefighter's political action committee may use PAC funds to send one or two of its members to an employer/employee relations seminar in Sacramento that will cover contract negotiations, because the use of funds is directly related to a political, legislative or governmental purpose of the PAC.

## Revolving Door

**Carlos Ramos**  
**Stephen P. Teale Data Center**  
**Dated: February 20, 2004**  
**File Number I-04-044**

A state employee who, upon termination of his political appointment to one agency, exercised his right of reinstatement to return to his former state agency employer, sought advice to identify which of these two agencies would be his "former state administrative agency employer" for purposes of the one-year "revolving door" ban. The employee was advised that exercising his right of reinstatement placed him under an employment agreement with that agency. Since he is being paid by one for vacation leave accrued while a political appointee at another agency and has not received compensation in connection with services performed in connection with his reinstatement, should he leave state service immediately upon expiration of his accrued vacation leave, the agency to which he was reinstated will not be a "former state admin-

istrative agency employer" for purposes of the one year ban.

**Paul D. Bresnan**  
**Secretary of State**  
**Dated: January 6, 2004**  
**File Number A-03-269**

A state administrative agency employee who is contemplating retirement, sought advice as to whether the "revolving door" or "permanent ban" provisions of the Act will prohibit him, after retirement, from appearing before or communicating with his former employer in order to obtain approval of a study course he intends to provide for notary public examinees. The employee also questioned whether these provisions prohibit him from providing training to these potential examinees.

The employee was advised that the revolving door prohibition applies only when an appearance or communication is in a paid, representative capacity and does not apply when a former employee is representing his or her own business interests. Thus, the one year, or revolving door ban does not apply to his application before his former employer for course approval. Similarly, the one-year ban does not apply when he provides training to potential examinees since such training would not constitute an appearance or communication before his former state agency employer. Although an application for course approval constitutes a judicial, quasi-judicial or other proceeding under the permanent ban, it would not be a proceeding in which he previously participated in his capacity as a state employee. Further, the training course itself would not be a judicial, quasi-judicial or other proceeding. Thus, the permanent ban does not prohibit these actions.

## Statement of Economic Interests

**Richard Cromwell, III**  
**Sun Line Transit Agency**  
**Dated: January 6, 2004**  
**File Number I-03-294**

In order to correct an error reported on a statement of economic interests, the filer must file an

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amendment correcting the information. In addition, the requestor was advised to amend any statements containing errors which were up to seven years old. Although the Act does not specify a deadline by which an amendment must be filed, the requestor was advised to file any required amendments as soon as practicable, and that they must be filed with the same filing officer as the original statements were filed.

**Michael A. Kvarme**  
**California Travel and Tourism Commission**  
**Dated: January 6, 2004**  
**File Number A-03-301**

Ex officio members of state boards and commissions must file statements of economic interests if they participate in making governmental decisions.